

October 13, 1951

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CONCORD, N.H.

Oliver M. Marvin
Tax Commission
Concord, N. H.

Dear Mr. Marvin:

This is to acknowledge receipt of your letter of October 17th wherein you have asked the following question, relative to approval of school district tax rates:

"Will you kindly advise us whether such cash surpluses should be used to reduce the taxes to be raised or whether such surpluses should be disregarded and the school district taxes approved as submitted?"

It is my opinion that any unencumbered cash surplus of a school district may only be used to reduce the taxes to be raised the following year unless the district has by proper vote authorized such surplus to be transferred to the capital reserve as provided by law.

I find the following statutory provisions relative to use of surplus school funds. School districts are authorized to establish capital reserves (Laws 1943, c. 160, s. 1-a, as inserted by Laws 1947, c. 2, s. 2). When such a reserve has been established the district may vote to transfer its unencumbered surplus funds to said reserve. Laws 1943, c. 160, s. 4. Revised Laws, chapter 135, section 5 provides that in any district in which the money produced by a tax of three dollars and fifty cents on a thousand dollars is more than sufficient for school purposes the treasurer of the district shall pay over the balance at the close of the school year to the state treasurer. Other than the above I know of no specific statute which defines the use of such surplus funds and I am assuming that in the cases before you neither of the above situations exists.

The authority to raise money as required by law, or in addition thereto, and to specify the purposes for which school money may be expended is in the school district and not its school board. R. L. c. 138, s. 3, as amended by Laws 1951, c. 211.

The use of unencumbered cash surpluses of a school district from one fiscal year to augment the appropriations for the following year may be a desirable purpose but since the statutes do not authorize such use by a school board, without legal action of the school district, I must conclude that you are correct in your interpretation that such cash surpluses should be used to reduce the taxes to be raised and are not to be expended for purposes within the discretion of the school board.

Yours very truly,

Gordon M. Tiffany
Attorney General

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